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1 2. Defendants SC Campbell, LP and Project Whitelight LLC owned Sushi
2 Confidential located at or about 247 E Campbell Ave, Campbell, California, in
3 November 2020 and December 2020.

4 3. Defendants SC Campbell, LP and Project Whitelight LLC own Sushi
5 Confidential (“Restaurant”) located at or about 247 E Campbell Ave,
6 Campbell, California, currently.

7 4. Plaintiff does not know the true names of Defendants, their business
8 capacities, their ownership connection to the property and business, or their
9 relative responsibilities in causing the access violations herein complained of,
10 and alleges a joint venture and common enterprise by all such Defendants.
11 Plaintiff is informed and believes that each of the Defendants herein is
12 responsible in some capacity for the events herein alleged, or is a necessary
13 party for obtaining appropriate relief. Plaintiff will seek leave to amend when
14 the true names, capacities, connections, and responsibilities of the Defendants
15 are ascertained.

16

17 **JURISDICTION & VENUE:**

18 5. The Court has subject matter jurisdiction over the action pursuant to 28
19 U.S.C. § 1331 and § 1343(a)(3) & (a)(4) for violations of the Americans with
20 Disabilities Act of 1990, 42 U.S.C. § 12101, et seq.

21 6. Pursuant to supplemental jurisdiction, an attendant and related cause
22 of action, arising from the same nucleus of operative facts and arising out of
23 the same transactions, is also brought under California’s Unruh Civil Rights
24 Act, which act expressly incorporates the Americans with Disabilities Act.

25 7. Venue is proper in this court pursuant to 28 U.S.C. § 1331(b) and is
26 founded on the fact that the real property which is the subject of this action is
27 located in this district and that Plaintiff's cause of action arose in this district.

FACTUAL ALLEGATIONS:

8. Plaintiff went to the Restaurant in November 2020 with the intention to avail himself of its goods or services motivated in part to determine if the defendants comply with the disability access laws. Not only did Plaintiff personally encounter the unlawful barriers in November 2020, he wanted to return and patronize the business two more times subsequent to his original visit but was specifically deterred due to his actual personal knowledge of the barriers gleaned from his encounter with them.

9. The Restaurant is a facility open to the public, a place of public accommodation, and a business establishment.

10. Unfortunately, on the date of the plaintiff's visit, the defendants failed to provide wheelchair accessible dining surfaces in conformance with the ADA Standards as it relates to wheelchair users like the plaintiff.

11. The Restaurant provides dining surfaces to its customers but fails to provide wheelchair accessible dining surfaces.

12. One problem that plaintiff encountered is the lack of sufficient knee and toe clearance under the dining surfaces for wheelchair users.

13. Plaintiff believes that there are other features of the dining surfaces that likely fail to comply with the ADA Standards and seeks to have fully compliant dining surfaces available for wheelchair users.

14. On information and belief the defendants currently fail to provide wheelchair accessible dining surfaces.

15. Additionally, on the date of the plaintiff's visit, the defendants failed to provide wheelchair accessible paths of travel in conformance with the ADA Standards as it relates to wheelchair users like the plaintiff.

16. The Restaurant provides paths of travel to its customers but fails to provide wheelchair accessible paths of travel.

17. A problem that plaintiff encountered is that the paths of travel to the

1 outside dining area required plaintiff to navigate curbs and cement blocks.

2 18. Plaintiff believes that there are other features of the paths of travel that
3 likely fail to comply with the ADA Standards and seeks to have fully compliant
4 paths of travel available for wheelchair users.

5 19. On information and belief the defendants currently fail to provide
6 wheelchair accessible paths of travel.

7 20. These barriers relate to and impact the plaintiff's disability. Plaintiff
8 personally encountered these barriers.

9 21. As a wheelchair user, the plaintiff benefits from and is entitled to use
10 wheelchair accessible facilities. By failing to provide accessible facilities, the
11 defendants denied the plaintiff full and equal access.

12 22. The failure to provide accessible facilities created difficulty and
13 discomfort for the Plaintiff.

14 23. The defendants have failed to maintain in working and useable
15 conditions those features required to provide ready access to persons with
16 disabilities.

17 24. The barriers identified above are easily removed without much
18 difficulty or expense. They are the types of barriers identified by the
19 Department of Justice as presumably readily achievable to remove and, in fact,
20 these barriers are readily achievable to remove. Moreover, there are numerous
21 alternative accommodations that could be made to provide a greater level of
22 access if complete removal were not achievable.

23 25. Plaintiff will return to the Restaurant to avail himself of its goods and to
24 determine compliance with the disability access laws once it is represented to
25 him that the Restaurant and its facilities are accessible. Plaintiff is currently
26 deterred from doing so because of his knowledge of the existing barriers and
27 his uncertainty about the existence of yet other barriers on the site. If the
28 barriers are not removed, the plaintiff will face unlawful and discriminatory

1 barriers again.

2 26. Given the obvious and blatant nature of the barriers and violations
3 alleged herein, the plaintiff alleges, on information and belief, that there are
4 other violations and barriers on the site that relate to his disability. Plaintiff will
5 amend the complaint, to provide proper notice regarding the scope of this
6 lawsuit, once he conducts a site inspection. However, please be on notice that
7 the plaintiff seeks to have all barriers related to his disability remedied. See
8 *Doran v. 7-11*, 524 F.3d 1034 (9th Cir. 2008) (holding that once a plaintiff
9 encounters one barrier at a site, he can sue to have all barriers that relate to his
10 disability removed regardless of whether he personally encountered them).

11

12 **I. FIRST CAUSE OF ACTION: VIOLATION OF THE AMERICANS
13 WITH DISABILITIES ACT OF 1990** (On behalf of Plaintiff and against all
14 Defendants.) (42 U.S.C. section 12101, et seq.)

15 27. Plaintiff re-pleads and incorporates by reference, as if fully set forth
16 again herein, the allegations contained in all prior paragraphs of this
17 complaint.

18 28. Under the ADA, it is an act of discrimination to fail to ensure that the
19 privileges, advantages, accommodations, facilities, goods and services of any
20 place of public accommodation is offered on a full and equal basis by anyone
21 who owns, leases, or operates a place of public accommodation. See 42 U.S.C.
22 § 12182(a). Discrimination is defined, *inter alia*, as follows:

23 a. A failure to make reasonable modifications in policies, practices,
24 or procedures, when such modifications are necessary to afford
25 goods, services, facilities, privileges, advantages, or
26 accommodations to individuals with disabilities, unless the
27 accommodation would work a fundamental alteration of those
28 services and facilities. 42 U.S.C. § 12182(b)(2)(A)(ii).

- b. A failure to remove architectural barriers where such removal is readily achievable. 42 U.S.C. § 12182(b)(2)(A)(iv). Barriers are defined by reference to the ADA Standards.
- c. A failure to make alterations in such a manner that, to the maximum extent feasible, the altered portions of the facility are readily accessible to and usable by individuals with disabilities, including individuals who use wheelchairs or to ensure that, to the maximum extent feasible, the path of travel to the altered area and the bathrooms, telephones, and drinking fountains serving the altered area, are readily accessible to and usable by individuals with disabilities. 42 U.S.C. § 12183(a)(2).

29. When a business provides facilities such as dining surfaces, it must provide accessible dining surfaces.

30. Here, accessible dining surfaces have not been provided in conformance with the ADA Standards.

31. When a business provides paths of travel, it must provide accessible paths of travel.

32. Here, accessible paths of travel have not been provided in conformance with the ADA Standards.

33. The Safe Harbor provisions of the 2010 Standards are not applicable here because the conditions challenged in this lawsuit do not comply with the 1991 Standards.

34. A public accommodation must maintain in operable working condition those features of its facilities and equipment that are required to be readily accessible to and usable by persons with disabilities. 28 C.F.R. § 36.211(a).

35. Here, the failure to ensure that the accessible facilities were available and ready to be used by the plaintiff is a violation of the law.

1 **II. SECOND CAUSE OF ACTION: VIOLATION OF THE UNRUH CIVIL**
2 **RIGHTS ACT** (On behalf of Plaintiff and against all Defendants.) (Cal. Civ.
3 Code § 51-53.)

4 36. Plaintiff repleads and incorporates by reference, as if fully set forth
5 again herein, the allegations contained in all prior paragraphs of this
6 complaint. The Unruh Civil Rights Act (“Unruh Act”) guarantees, *inter alia*,
7 that persons with disabilities are entitled to full and equal accommodations,
8 advantages, facilities, privileges, or services in all business establishment of
9 every kind whatsoever within the jurisdiction of the State of California. Cal.
10 Civ. Code §51(b).

11 37. The Unruh Act provides that a violation of the ADA is a violation of the
12 Unruh Act. Cal. Civ. Code, § 51(f).

13 38. Defendants’ acts and omissions, as herein alleged, have violated the
14 Unruh Act by, *inter alia*, denying, or aiding, or inciting the denial of, Plaintiff’s
15 rights to full and equal use of the accommodations, advantages, facilities,
16 privileges, or services offered.

17 39. Because the violation of the Unruh Civil Rights Act resulted in difficulty,
18 discomfort or embarrassment for the plaintiff, the defendants are also each
19 responsible for statutory damages, i.e., a civil penalty. (Civ. Code § 55.56(a)-
20 (c).)

21 40. Although the plaintiff encountered frustration and difficulty by facing
22 discriminatory barriers, even manifesting itself with minor and fleeting
23 physical symptoms, the plaintiff does not value this very modest physical
24 personal injury greater than the amount of the statutory damages.

25
26 **PRAYER:**

27 Wherefore, Plaintiff prays that this Court award damages and provide
28 relief as follows:

1. For injunctive relief, compelling Defendants to comply with the Americans with Disabilities Act and the Unruh Civil Rights Act. Note: the plaintiff is not invoking section 55 of the California Civil Code and is not seeking injunctive relief under the Disabled Persons Act at all.

2. Damages under the Unruh Civil Rights Act, which provides for actual damages and a statutory minimum of \$4,000 for each offense.

3. Reasonable attorney fees, litigation expenses and costs of suit, pursuant to 42 U.S.C. § 12205; and Cal. Civ. Code §§ 52.

Dated: March 4, 2021

CENTER FOR DISABILITY ACCESS

By: Amber

Amanda Seabock, Esq.
Attorney for plaintiff